UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

FORT PIERCE DIVISION

CASE NO. 23-80101-CRIMINAL-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD J. TRUMP, WALTINE NAUTA and CARLOS DE OLIVEIRA,

Defendants.
_____/

FORT PIERCE, FLORIDA

NOVEMBER 1, 2023

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TRANSCRIPT OF MOTIONS HEARING

BEFORE THE HONORABLE AILEEN M. CANNON

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:
JAY BRATT, ESQ.
DAVID HARBACH, ESQ.
JOHN PELLETTIERI, ESQ.
MICHAEL THAKUR, ESQ.
U.S. Department of Justice
Office of Special Counsel
Washington, D.C. 20530

FOR DEFENDANT TRUMP:
CHRISTOPHER KISE, ESQ.
Chris Kise & Associates
Tallahassee, FL 32301

TODD BLANCHE, ESQ.
EMIL BOVE, ESQ.
Blanche Law
New York, NY 10005

FOR DEFENDANT NAUTA:
STANLEY WOODWARD, ESQ.
Brand Woodward Law
Washington, D.C. 20001

SASHA DADAN, ESQ.
Dadan Law Firm, PLLC
Fort Pierce, FL 34950

FOR DEFENDANT DE OLIVEIRA:
JOHN IRVING, ESQ.
E & W Law
Washington, D.C. 20004

DONNIE MURELL, ESQ.
L.D. Murrell, P.A.
West Palm Beach, FL 33401

DIANE MILLER, RMR, CRR, CRC
Official Court Reporter
U.S. District Court
diane_miller@flsd.uscourts.gov

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good afternoon. Please be seated unless you are addressing the Court.

All right. This is case number 23-80101, United States of America versus Donald J. Trump, Waltine Nauta, and Carlos De Oliveira.

Let's start with appearances, members of the Office of the Special Counsel first and then I'll go one by one with the Defense team.

MR. BRATT: Good afternoon, Your Honor; Jay Bratt, David Harbach, Michael Thakur, and John Pellettieri from the Special Counsel's Office on behalf of the United States.

THE COURT: Good afternoon to all of you.

All right. Let's hear first from counsel for former President Trump.

MR. BLANCHE: Good afternoon, Your Honor, Todd Blanche, and I'm joined at counsel table for the first time with my parter, Emil Bove, for President Trump; and my understanding is Christopher Kise is dialed into the conference as well. Good afternoon.

MR. KISE: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Blanche and Mr. Kise.

Mr. Kise, can you hear us okay?

MR. KISE: I can, Your Honor; and I'm going to leave my phone on mute because it's fairly noisy here at the UN

Courthouse; but thank you for letting me appear by phone.

THE COURT: Okay. All right.

Then counsel for Waltine Nauta.

MS. DADAN: Good afternoon, Sasha Dadan and Stanley Woodward on behalf of Waltine Nauta.

THE COURT: Good afternoon.

And finally, counsel for Carlos De Oliveira.

MR. IRVING: Good afternoon, Your Honor, John Irving and Donnie Murrell.

THE COURT: Good afternoon.

All right. This is a hearing to discuss Defense motions for a revised pretrial and trial schedule. As usual, there shall be no possession of cell phones or other electronic devices, no recording or broadcasting of any kind using such devices. We have set up, as we normally do, the overflow room on the second floor along with the contemporaneous Zoom feed, so this is a public hearing.

As brief background, on July 22nd of 2023, following a hearing held prior to the return of the pending superseding indictment in this case, the Court entered an order granting in part the Government's motion for a continuance and reset pretrial and trial deadlines pursuant to a detailed schedule laid out in docket entry 83, taking into account specific deadlines under the Classified Information Procedures Act which I will reference as "CIPA," and other deadlines under the

criminal rules and the Court's standard scheduling order.

Now pending before the Court are docket entries 160 and 183 along with the numerous related filings to those motions. Those motions, as I have indicated, they move in combination. All defendants join in these motions for a revised schedule as relates to Section 4 litigation under CIPA, Defense motions to compel discovery and also as supplemented with respect to additional pretrial and trial deadlines. Of course, the current trial is set for the two-week period starting on May 20th of next year. So this is a hearing to discuss those motions. And because they are Defense motions, I will hear first from counsel for the Defense.

But before I turn to you, let me first ask Mr. Blanche: Have you all come up with a format in terms of presentation for today's hearing?

MR. BLANCHE: Your Honor, I will be presenting, on behalf of President Trump, the motion in its most significant manner; and then to the extent that counsel for Mr. Nauta or Mr. De Oliveira wants to supplement, I expect they will do so.

THE COURT: Okay. All right.

Okay. All right.

Well, then, let's start with you, Mr. Blanche. I see the issues raised in these motions falling in a number of different categories, big picture, specific discovery issues and all the granular details that go along with that, so I

would like to use this hearing to try to assist the Court in fully understanding the scope of discovery both in an unclassified manner as well as classified.

The next sort of big bucket I would say concerns the scope of any defense motions to compel. That segues or is considered alongside the Section 4 discussion which I think is illuminated in part following the Court's order entered today on the subject of Section 3 and Section 4. And then finally, there is the category of logistical concerns; and under that category, I'm thinking the complex and numerous issues associated with the classified discovery in this case, the logistical issues associated with that, the facilities and the concerns associated with the establishment of those facilities along with the various schedules that have been referenced in the papers. So that's kind of the overview, as I see these motions in their current form.

So let's start with the discovery issues in detail.

MR. BLANCHE: Thank you, Your Honor.

So just first addressing the unclassified discovery, as we discussed and as Your Honor is aware from both parties' briefing this past summer, it is extraordinarily voluminous. The most -- and the Special Counsel, as they have represented to the Court accurately, have provided a lot of material that in many cases the Defense wouldn't get so early, including the grand jury transcripts and traditional *Jencks* and 3500 material

for the most part; and that is certainly helpful for President Trump and for all of the defendants in preparing a defense and preparing and going through discovery. But the discovery itself remains extraordinarily complicated and voluminous especially as it relates to the CCTV footage. It is very cumbersome, if not impossible -- and I can certainly let co-counsel speak to this, as well, who have been challenged with these issues as well. We simply can't load it in an effective way to review it.

And the Special Counsel has directed us to certain portions of the CCTV footage that they view as the most relevant, but there is -- from what we know and from our defense, there is a tremendous amount of CCTV footage that we believe has been produced that is not what they have identified that is extremely relevant to us. For example, to the extent that boxes were moved on occasions other than what is delineated in the indictment, that is certainly something that matters to us.

THE COURT: Okay, so hold on.

On the CCTV, how much exactly, because all these numbers are flying around in terms of terabytes, disks, documents, records, and that's kind of what I'm struggling with. I would like to get some particular details on the subject. So focusing in on the CCTV footage, how much is it?

MR. BLANCHE: There are differences of views on that.

My -- our understanding, on behalf of President Trump, is it's comprised of multiple cameras, some of which show the same location just from different angles that span approximately a nine-month period of time, but the way that it was subpoenaed and produced to us, it comprises several years. And depending on -- and depending on the format, apparently, that you view it in, it can be reviewed more quickly so you can accelerate the view. However, up to this point, we don't have -- or we are having challenges getting that done. The Special Counsel, as recently as this week, has been working with Defense to figure out a computer that is able to do that. But when we had our vendor, our external vendor just try to load it, I believe it took almost a month, three weeks just to load it into the system just so we could view one video which isn't obviously practical. And we are not asking -- you know, we are not assuming that that's practical.

So the amount -- the amount, if you just play it out in minutes, is years. But putting that aside, because there are some cameras that are of the same location, so in theory, you can watch that, you know, at a similar time, then we have the problem with just being able to view it and just having the programs that allow us to view not only the parts identified by the Special Counsel but the parts that matter to us as well.

In addition -- in addition to those materials, there -- the rest of the discovery which we are working our way

through that includes cell phone evidence, it includes a significant number of narrow-related correspondence, it includes a significant amount of other evidence gathered in the course of interviewing witnesses that we are still going through. And we have continued to get discovery from the Special Counsel which is not unusual and I'm not saying that it is, but we have continued to get discovery from the Special Counsel regularly since the initial production, and we have been working our way through it, and we are steadfastly trying to do that.

But now turning to the classified discovery, it's very related and the challenge with the classified discovery to this date is that until a week ago, a week-and-a-half ago, we were in a location that is very difficult to work in. It was a temporary location. It was very small, and it was very challenging to study the classified materials but then be able to look at the unclassified discovery in connection with that. And there is a lot of it that is obviously very related given the nature of the charges, the fact that there were, you know, allegedly classified materials found in connection with a lot of unclassified materials, right? And we have requested from the Special Counsel some assistance with that.

So for example, there was a picture that was provided in classified discovery -- or a couple pictures and -- but the bulk of the data from that phone was unclassified discovery,

and so we requested that we receive the full contents inside of the SCIF to allow us to review it more efficiently just to help us review it.

It has been extremely difficult, as Your Honor knows from the various briefs that we have submitted to the Court and to have even access to the documents. We now do, so all of --

THE COURT: Let's understand that. As of what date did you have -- or was, I should say. As of what date was all of the classified discovery produced in this case made available to the Defense in this district minus -- I know there is a category, a small subset of special measures material that cannot be permanently stored, but that's my question in terms of timing, as of what date?

I have seen the date October 6th floated around, and I'm just trying to get some definition on that.

MR. BLANCHE: Let me just confirm I'm right.

It's the 17th?

October 17th.

And by the way, you know, the Special Counsel criticized us for the fact that there was an 11-day window between the day that it was apparently available in D.C. and available to be delivered to the SCIF and the time we showed up there. We found out on a Friday night -- Friday afternoon that it was available. Monday was Columbus Day. We had CIPA filings, as the Special Counsel knows, in the D.C. case that

week. We had a conference before Your Honor that week, and the -- and we had a Section 4 CIPA hearing in D.C. the following Monday that we had to prepare for, all information that Special Counsel knows. We flew directly from D.C. down here on the 17th to be able to receive this material.

So it is not as if we found out that we had additional discovery that we could finally look at and said, we will just wait 11 days and take our time. We left on a Thursday night, found out on -- we were down in the SCIF that week, found out on Friday there was additional materials available and ended up meeting the folks on the 17th to actually review and receive the material.

THE COURT: So at this point, have you had access to all of the classified discovery associated with the underlying counts 1 through 32?

MR. BLANCHE: We have -- yes, Your Honor.

THE COURT: And that happened, you're saying, on the 17th of October when you were able to be here locally; is that correct?

MR. BLANCHE: There was one -- there was a series of documents that I believe were flown down the next day that we -- but yes, Your Honor, yes.

THE COURT: Okay.

MR. BLANCHE: We do understand there was some additional classified discovery placed in the SCIF last week,

and we were in the SCIF yesterday. We didn't -- because of miscommunication, which is totally understandable, we didn't -- we didn't know was there, so we know there is some more discovery in the SCIF as of last Tuesday that we haven't reviewed yet. We understand that we will get a discovery letter today with respect -- or tomorrow with respect to those materials and then have to return at some point soon to take a look. But as to the charged documents, we now have had opportunity to visually review every one.

THE COURT: And that happened October 17th and beyond?

MR. BLANCHE: Correct.

THE COURT: Okay.

MR. BLANCHE: And, you know, Your Honor, not to belabor the point, but we spent a tremendous amount of time in that SCIF since we received discovery. We are not -- you know, when we talk about asking for additional time or needing more opportunity to consider and review the materials, it's not because we are not going down to Miami regularly -- almost weekly -- and spending a significant amount of time there.

There was a meaningful -- as Your Honor knows from our submission, we put a letter to the Special Counsel asking for a tremendous amount of different documents that we continue to believe we are entitled to. In response to that, we received -- we received some additional documents. The

additional several thousand pages that we received a few weeks ago are extraordinarily dense, very -- you know, they are memos, and they are very challenging materials to get through in a SCIF that Special Counsel, when we found out about it and we asked if they would agree to more time, literally said in an e-mail to us that two days was plenty of time for us to review the new material, get them whatever requests we had by the end of that week, and then, you know, potentially have one extra week before Your Honor to actually make motions to compel. And you know, I don't say this lightly, that is just not true. I mean, we are talking about several -- over a thousand pages and we are not talking -- for the most part, we are not talking about grand jury transcripts or inventory that you can flip through. We are talking about very dense review materials, Prudential Review Materials that we had requested and that will lead to motions to compel and that will lead -- and they have led to additional discovery.

We submitted another demand last night, a classified letter to the Special Counsel, an unclassified letter today, and we expect that it will work. I mean, we have gotten some more materials from Special Counsel, we are willing to and we are prepared to engage in meet and confer after we get answers to the most recent ones because we now have what I will say is, for the most part, a fuller volume of classified discovery. But we just really got that and we just have been able to go

through it. And we did -- we put two or three letters to the Special Counsel asking for clarification, more materials; they responded and they put their position -- made their position. We followed up. They had some questions about some of our requests, we followed up. We intend to follow up; and we are optimistic that after a meet and confer, we will find common ground for at least some of the demands that we have. But we are sure we are going to need to file motions to compel. There is a meaningful disagreement --

THE COURT: Okay, hold on.

On the -- you said you have gotten some answers to your questions. Have you gotten yet an answer to whether the agency's -- or the Government -- excuse me -- conducted Prudential Search Reviews?

MR. BLANCHE: Vague answer, we received some. We were told, as I think was also told to the Court, something vague about what they believe they were required to do under the law, what the Department of Justice requires them to do. We still don't know what they did. They haven't affirmatively said "here is what we did, here is what we didn't do" to allow us to then react to that and possibly make a motion.

THE COURT: What about classification reviews, have you received all of those?

MR. BLANCHE: No, Your Honor, we have not received all of them. That is one of the things that we are continuing

to ask about. We have received them for -- I believe for the charge documents; but as what should be obvious from the volume compared to the 32 counts, there is a tremendous number of documents that are extraordinarily important to our defense that are purportedly classified that we don't have any information about at this time.

THE COURT: Okay. What about the *Jencks* Act or *Giglio* material by law enforcement witnesses? There was some discussion of that.

MR. BLANCHE: We have some, but we know from the review of what we have been provided that there is a lot more. I mean, maybe it is obvious, but there will be references in the communications to other e-mails or other communications that are potentially classified -- we don't know because we don't have them -- that we haven't received.

So we understand -- there has to be more *Jencks* and 3500 that we -- that we are entitled to and that we don't have yet. And we have, of course, demanded that. We have -- we do have some though, it is not that -- we have some.

THE COURT: And then what about -- there was also some reference to the Special Counsel's definition of its prosecution team? Have you gotten any more clarity on that front?

MR. BLANCHE: Well, yes, Your Honor. They, quite surprisingly, are taking the position that NARA is not part of

their prosecution team and that many of the intelligence agencies are not part of the prosecution team. We are going through evidence, both classified and unclassified, that will be part of -- assuming they don't change their mind will be part of a motion to compel. The big question for Your Honor will be whether NARA is, in fact, part of the prosecution team.

We have seen communications between NARA and the Department of Justice and the White House and the Special Counsel that started way before what has been publicly disclosed and extensive meetings, extensive communications; and so we feel very strongly and expect that we will win on that, when we file the motion that NARA is absolutely part of this prosecution team and that the intelligence communities that they worked very closely with in determining the -- well, from what we can tell, the particular documents that they chose to charge. So there is purportedly a tranche of documents that have classified headings on them and then 32 that they decided to charge. That wasn't just done in a vacuum. They didn't just, you know, pick 32 documents out of a hat and say "we will go with these." There was a lot of coordination that we can tell from the materials we do have with the intelligence community that ultimately led them to proceed the way they did.

So yes, we have an answer with them. They say very strongly that they view the prosecution team as being limited to the Special Counsel's Office and the FBI, and we very

strongly believe that's wrong.

THE COURT: Okay.

All right. You hinted at this a little bit, but on the subject of motions to compel, what sort of categories at this point do you anticipate seeking to compel? I know this is somewhat in flux, but if you can shed some more light on that. And then also answer why, in your view, the defense motions to compel need to come before Section 4 litigation.

MR. BLANCHE: Of course. So there is a broad range of discovery we believe we are entitled to that if we are not able to meet and confer and reach agreement will be part of the motion to compel. The most significant, for sure, has to do with NARA and has to do with communications of Special Counsel and the D.C. U.S. Attorney's Office before the Special Counsel was appointed had with NARA, the White House, and other intelligence agencies, and we know we don't have it all. We can tell from what we do have that there is a lot more out there.

There is also all Prudential Review for sure. The way that the intelligence community decided why certain documents have the classification and continue to be closely held, there is a lot more information that we don't have about that process and the back and forth that went into the decisions that were ultimately apparently made.

There is a category of documents that it -- actually

in unclassified discovery. We learned a week or two ago that there is a certain category of documents that require what is called a "Q clearance" and it includes one of the charged documents, and we learned that it's a Department of Energy program. We learned that President Trump continued to have an active security clearance even after he was indicted in this case with the Department of Energy. Now that, in our view, is the definition of *Brady*. It was -- I'm not going to say it was buried, but it was provided to us in discovery as part of miscellaneous materials at some point in the third or fourth production. I mean, it is literally a memo from the Department of Energy dated June -- dated late June of this year, June 28th of this year, saying that, oh, we should remove Donald J. Trump from the person who has an active security clearance. He has been charged with possessing a document, in violation of federal law, when he has an active security clearance with the holder of that document.

So anyway, there is a category of materials such as that that we don't believe we have in discovery that we are going to -- that we are going to -- be part of our motion to compel.

THE COURT: So why wouldn't -- turning now to the sequencing, why not go through the Section 4 process in a reasoned way with enough time and then set a deadline for a motion to compel that is after the Section 4 submissions?

MR. BLANCHE: Well --

THE COURT: Assuming there is only one which it appears there may need to be at least more than one.

MR. BLANCHE: Correct. Well, certainly, if the goal of the Court is to only have one, it, in our view, is extraordinarily inefficient to have a Section 4 submission tomorrow, for example, because we could certainly put something together relatively quickly and say what our defenses are today. We have reviewed all the discovery that we have. Like I said, there is unclassed discovery that plays into our Section 4 motion. But we have asked for a huge tranche of discovery from the Government that will most certainly go to our defense in this case. This is a very unique case when it comes to the retention of purportedly, you know, closely-held information. And the information we are requesting from the Special Counsel, from NARA will for sure counsel our defense in this case which is really what a Section 4 is about is educating you about what we expect our defense to be.

So if we file a Section 4 next week --

THE COURT: So your view is that it would be incomplete, necessarily preliminary and setting us on a path of inefficient multiple rounds of Section 4; is that basically your point?

MR. BLANCHE: Yes.

And if just I can put a finer point on that, a

Section 4 is a big deal for the Government. They are saying to the Court, there is discoverable information that we don't think the Defense gets and they should get affirmations from the Attorney General, they should get affirmations from the intelligence community, and so it is a big deal. So going through that process now and then filing motions to compel -- and let's assume some of them are granted -- we are then going to have to do it over again after we review the additional materials that we were entitled to in the first place.

As of -- Your Honor, if you consider our proposed schedule in our initial brief, we are basically on track with that schedule. So we are a little behind because of the delays in having access to some of the materials. But the original schedule compels the Government to answer our various discovery demands. We gave one last night and one this morning. Assuming they don't agree, we then meaningfully meet and confer over the next week or two. And "meaningfully" because I do think that -- I don't expect they are going to be unreasonable. And then once they have determined and we are at a dead end, we can put together a motion to compel rather efficiently and quickly. We are talking about doing that at the -- we would be able to do that at the end of the month, Your Honor. There would be opposition briefs and replies, and then we are putting a substantive Section 4 litigation in early January on that schedule which is not inefficient at all, when you consider the

alternative which is to put a Section 4 in in the next week, and then we file motions to compel under the same schedule that I just described, and then we are stuck in January with all kinds of potentially additional discovery filing another Section 4.

So I don't know at this point how it's more efficient to proceed the way the Special Counsel wants to as opposed to the way that we asked for in our papers.

THE COURT: Do you have any sense for how long it would take to complete the motion to compel process not including Court review?

MR. BLANCHE: Your Honor, we can commit to filing a motion to compel within two weeks of the meet and confer being over, even sooner if the Court desires, and we have another -- we have multiple deadlines in the D.C. case that we are running interference on a little bit, but that's -- if we meet -- if we wait a week or so for the Special Counsel to respond to our latest discovery demands, have a week -- you know, four or five days to get together and meet and confer with them, we can be prepared to file a motion to compel in short order.

THE COURT: Okay.

Let's shift gears briefly just -- I have some -- a question. There is some briefing -- references in the briefing to the ex parte nature of the Section 4. Obviously, the statute permits the Section 4 process to occur on an ex parte

basis, but there is the Eleventh Circuit decision in *Campa*, so I wondered if you could address that at all and your view as to whether the Section 4 process, at least with respect to your client only, would need to be ex parte and by that I mean attorneys' eyes only.

MR. BLANCHE: Correct, thank you.

So we believe that the circumstances of this case, and Your Honor certainly has the discretion to conduct it ex parte, but in the circumstances of this case, the nature of the materials that we expect will be the issue of the Section 4 motion by the Government, there is no national security interest reason that cleared counsel cannot be part of that process. And by "cleared counsel," we are talking about we have been read into, obviously, extremely sensitive programs and so maybe we would need to be read into an additional program, I don't know because I don't know the nature of the motion. But it seems like there is, given the circumstances, it's by far the best way to educate Your Honor about our defenses instead of asking you to step in our shoes and think, well, what would the defense be to this -- to this document or this series of documents or this information. We would be able to say whether there was one and what it would be, if any.

THE COURT: Does the Eleventh Circuit's decision in *Campa*, though, foreclose your position that Section 4 would -- could be done on a non-ex parte basis or an attorneys' eyes

only basis? In other words, is there any limitation in that decision to your position?

MR. BLANCHE: I don't think there is -- no, Your Honor, I don't think there is a limitation in the decision to our position. I think there is a tremendous amount of discretion that *Campa* affirms, when it comes to this type of decision. Your Honor can fashion it under *Campa* and other laws however you believe appropriate. And that includes ex parte, but it includes ex parte plus attorneys' eyes only. It includes maybe not -- I mean, honestly, Your Honor, you can do whatever makes the most sense. You can limit what we get and what we receive and just share some of the position.

The whole point of Section 4 is for Your Honor to be educated about what our defenses will be so that Your Honor makes the right decision and whether to grant it.

THE COURT: Okay. And then on the subject of logistical issues, Special Counsel's Office, I think it says at one point that nothing material has changed since the Court set the trial date. I'm curious what your thoughts are on that in terms of just operational logistical concerns.

MR. BLANCHE: Yes; thank you, Your Honor.

Everything has changed, and I'm not trying to be flippant with the Court. I mean, since Your Honor considered the motions last summer, putting aside the superseding indictment filed in this case, the indictment filed against

President Trump by the same office, by the same office, completely disrupted everything about the schedule Your Honor set. There is not a single part of Your Honor's schedule that is not adversely affected by the D.C. schedule that was ultimately set by the judge but also by the schedule that was demanded by the Special Counsel in D.C., all of this done, to the best that we are aware, without any regard to Your Honor's schedule which, you know, we put a notice in and we have alerted Your Honor to this. But it is troubling that even as late as last week, the Government accuses us of being sinister, sinister because we are bringing to the Court's attention to the fact that President Trump now has -- putting aside his counsel, President Trump now has what amounts to probably a two-and-a-half month trial starting in March in advance of a May 20th --

THE COURT: Can you tell me when is that trial set to begin?

MR. BLANCHE: March 4th.

THE COURT: And where are you getting the two-and-a-half month estimate from?

MR. BLANCHE: So there is a little bit of speculation here, but the Government estimates a four- to six-week trial. We estimate, at this point, at least a two-week defense case, although we are still, frankly, about 20 percent through the discovery. And then our understanding from the voir dire

process is that it will be very complicated to select a jury and that doesn't start until the 4th, and then we are building in time for deliberations. And so when you add -- when you put that together, you're at least at two months and really potentially more than that if anything lasts longer.

THE COURT: Okay.

All right. Anything further? And then I'll give the other defense lawyers an opportunity to be heard, and then I'll turn to the Special Counsel's Office.

Oh, no, no, no; I said anything further.

MR. BLANCHE: Oh.

No, I mean -- look, I don't want to belabor the point with the scheduling but -- and it's in our position papers, but the real pressure on President Trump and on us, his counsel, is a combination of a compressed schedule by the case in Washington, D.C., and by this case as originally set which we all agreed was a very aggressive schedule. And so even with things like pretrial motions that are due in this case, we were required to file substantive pretrial motions in D.C. last week. Those were extraordinarily voluminous, took a tremendous amount of time, time away from what we have been working on in this case, Your Honor. We have a series of deadlines between now and early January in the D.C. case: Motions in limine, expert notice, identification of exhibits, opposition to all of that. We have current motions pending, seven of them. We

have -- we have motions due this week and next week on various issues that have been briefed. On top of all of that, there is CIPA litigation in the D.C. case, and we have already filed a -- it is not as voluminous, we filed a Section 4 and a Section 5 motion already and this --

THE COURT: Okay, I think I get the point that there is a lot of work and clearly a lot of moving parts.

All right, thank you.

MR. BLANCHE: Yes, Your Honor.

MR. WOODWARD: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. WOODWARD: I appreciate the Court's assistance in helping me be here today. I'll just make a few quick points echoing --

THE COURT: Before you begin, let me make sure Mr. Kise is still with us.

Mr. Kise, are you there?

MR. KISE: I am, Your Honor. I had one minor point to add, but I will wait until everyone is done because they may cover it, in the interest of efficiency.

Thank you, Your Honor.

THE COURT: Okay. All right. Please make sure to chime in, in case we forget about you since you are not here.

MR. KISE: Okay. Thank you.

THE COURT: All right. Mr. Woodward.

MR. WOODWARD: We will never forget Mr. Kise.

So I'll make a few quick points on top of what Mr. Blanche shared.

I think, for us, we still don't have access to the classified documents. I still don't have the final security clearance. I was read in last Wednesday and I was told that it would be at least two more weeks before I could have access to the documents. Ms. Dadan has been read in and I believe is being given access to the documents or most of the documents tomorrow. But for our purposes, we think it is incredibly important that we understand what the classified records are and we don't have access to the documents. So we have a hard time making a representation to you, whether it is CIPA 4 litigation or general discovery, because we haven't seen the things that Mr. Blanche and his team have seen; obviously have not had an opportunity to discuss with him or his team what is in -- the totality of what is in the SCIF, and so we are just -- we are just in a position where that hasn't been possible.

THE COURT: Okay. Well, then, where are you specifically with the unclassified discovery, and can you shed some light on the quantity of the data involved and --

MR. WOODWARD: I can.

Let me make one more point, if you would indulge me, on the classified discovery is that the logistics of the

classified discovery have also been incredibly troubling.

I think as the Court is aware, we were first given temporary access to I believe it is actually the judge's SCIF. That's now been moved, so I don't even have access to the documents that had been provided to us. I have to get read in or trained on how to get access to this new SCIF.

There is some discussion between my co-counsel and the CISO about whether -- whether and where the documents are to be housed given that I don't have full access. And you know, put quite frankly, Your Honor, there is not a SCIF here; and so as we begin to bring issues to the Court that we have -- and I have identified several already, but of course my notes are in Miami and not here. But there, as -- obviously, the Court's ruling today sheds light on how we are going to move forward, but there are records, including my client's cell phone, that I would like to discuss with my client that I can't now do. So the only --

THE COURT: And you can't because?

MR. WOODWARD: It is in the SCIF. The only full copy forensic extraction of my client's cell phone that I have access to is in the SCIF; and under the Court's Section 3 order, I can't discuss that with my client. So we --

THE COURT: Why, because the phone itself contains classified information?

MR. WOODWARD: I haven't been able to get to the SCIF

to see exactly why the copy has been placed there, but that's my assumption.

THE COURT: So if the forensic copy of the phone is unclassified, then presumably this restriction would not be a restriction.

MR. WOODWARD: And I have to go down to Miami and write a motion in Miami that is then brought to you here, in Fort Pierce. I don't candidly know how it is that you are presented with that information, given that there is not a SCIF in this courthouse. But yes, that's what I'll be doing next week because it is obviously of critical importance to us to discuss with Mr. Nauta the contents of his phone as they relate to the allegations in this indictment.

Now, I want to be clear, we have been provided an unclassified copy of his phone, but I don't know what is missing, and I can't look at the phone let alone have an expert forensically consider what is on the phone because I don't have access to it yet in the SCIF.

THE COURT: That is true that there are a number of challenges logistically given the volume and nature of the classified discovery in this case. One of the issues is the establishment of the SCIF in this division which was not done until the Court, in consultation with the litigation security group, initiated those efforts after the indictment, and so that has necessarily complicated and introduced some

unpredictability in the mix. Hopefully, if the estimates prove out, we will have a suitable facility come early next year, but that's with optimistic estimates. And so there are certain realities that I think you're touching upon that do affect the work in this case and certainly impact the Court's ability to do its work as well. So I acknowledge your concerns.

What else would you like to say about discovery?

MR. WOODWARD: I'll turn then to the nonclassified discovery and, in particular, I can shed some light on the video CCTV footage that we are working on.

So the order of operations is as follows, because I do want to be clear about timing of things as I expect my colleagues across the aisle will come up here and tell the Court that in July of this year, they wrote Ms. Dadan and myself and they provided us with the very first tranche of discovery that was made available to President Trump and his counsel, after President Trump and his counsel were arraigned. You will recall that Mr. Nauta was arraigned some weeks later.

We have -- President Trump and his counsel are utilizing a vendor to process e-discovery. That is all hosted on a platform called "Relativity." We have our own separate log-ins to Relativity that President Trump and his counsel do not have access to, so we can go in and review the documents, tag the documents, write notes about the documents, and that's all separated. But for obvious reasons, the vendor is not

hosting two copies of every document. So when the Special Counsel's office provided us with discovery, we asked and received confirmation that it was the same discovery that had been provided to President Trump and his defense counsel.

As Mr. Blanche touched upon, what the Special Counsel's office noted is that there is certain video, CCTV footage of Mar-A-Lago that they had identified as being the pertinent sections of video that they thought we should watch. Fine, that's a great place to start. We watched that video, and as the Court won't be surprised to hear, concluded that we needed to look at additional video ourselves.

We have, of course, the benefit of consultation with our clients and are able to talk about what video we should be looking at and what video we should not be looking at. And the entire nature of the allegations of the charges in this case are about missing boxes, right? The indictment is charging Mr. Nauta -- and I'll just stick with my client, with Mr. Nauta -- with having moved boxes. Some number of boxes come out of a storage room, a lesser number of boxes go into the storage room, and Mr. Nauta is charged with hiding those boxes from whether it is Trump's then counsel or whether it is the Government. And obviously, we are interested in knowing where those boxes are if they are, in fact, missing. The CCTV footage is what is going to help us understand that riddle.

Now, the Government does not know where those boxes

went. As far as I can tell, to this day, the Government does not know where the boxes they allege were hidden ended up. So we then reached out to the Government in October and said "Government" -- oh, sorry, one other important fact for the Court. It turns out that the raw video footage that the Government provided to the vendor cannot be loaded into Relativity and viewed in Relativity. Relativity is a platform that is designed for reviewing static documents, PDFs, Words, even Excels, but it doesn't do well with video.

I have had to deal with this issue in Washington on the Capital siege cases, and I will tell you that the databases made available by the Government are different for documents than they are for video. Relativity just doesn't handle video very well.

So the vendor that President Trump is using does not have for us a way to review the video that was produced by the Special Counsel's Office back in July. So in October, I wrote the Special Counsel's Office and I said, "You all had promised me an array" -- and I'll come back to what that means -- "in July, I never followed up, I own that, but now I understand the need for the array, could you please send it to me?" They did promptly; I think I got it the next day.

What is this "array"? This array --

THE COURT: How do you spell that?

MR. WOODWARD: A-R-R-A-Y.

THE COURT: Okay.

MR. WOODWARD: And this is a -- if you have ever heard the term "raid," R-A-I-D, it is an external device that has multiple hard drives in it that when you plug into your computer, makes it look like one drive; and the reason for that is because this array contains roughly 60 terabytes of data that is CCTV footage.

Just to give the Court an example, I looked on Amazon here a few minutes ago, and the largest drive that you can buy for a Western Digital external hard drive that you plug in and then plug into your computer is 22 terabytes. So this is at least three times as large as sort of the standard hard drives that we non-tech people are buying to put our pictures and our things on, so 60 terabytes.

In addition, the files on the drive are all zipped or archived, and you have to use a proprietary software called "7-Zip" which is available for free -- I have used it before -- it is not a hardship, but you have to use a proprietary software to unzip every single file that contains video on the drive, and there are thousands of these files that have to be unzipped.

And so to give the Court an example, the files are organized in evidence folders, and so as the Court is familiar, when the FBI gathers evidence and collects it, they store it in folders 1B1, 1B2, 1B10. So they are all evidence, they are all

stored in separate folders. As best I can tell, it will have one or two angles of CCTV footage in each folder. 1B6 is what I am most recently working on extracting. It has 23 separate zip files. When I started the extraction, the 7-Zip program told me that it was going to take me 24 hours to extract. That's one of the -- Court's indulgence -- that's one of the dozens of such folders, two, four, six, eight, 10, 12, 14, 16, 18 -- roughly 21, 22 folders.

Moreover, in the Government's -- excuse me, the Special Counsel's Office discovery letter to us, the only label that we are given with respect to the video is, and I quote, MAL space CCTV. So now I have to go in and extract all of these folders, roughly 20, each of which is taking me 24 hours of computer processing time. I have a whole separate computer that I'm using just to do these extractions so that I can go in and start watching this days of video so that we can make an assessment of what this case is all about and whether it is about missing boxes or about boxes that just weren't found when the FBI conducted its search of the property.

Now the Government -- excuse me, the Special Counsel's Office has brought me, I think, a laptop that they say that will make this process better. They are going to give it to me today, and I will take it home and I will dutifully use that instead of the one that I'm using. I don't think that it's going to make any difference. I think it is just a lot of

data, sixty terabytes of CCTV video footage. And so, Your Honor, I'm sorry for taking so much of the Court's time, but I just wanted the Court to have an understanding of just the real person power that has to go in before we can even start looking at video and assessing its understanding. This is -- Mr. Nauta and I not even having sat down yet to watch one minute of the video, and I still have to do that. So --

THE COURT: Do you anticipate any motions to compel from your end?

MR. WOODWARD: I don't know. The answer is -- is yes, but I can't tell the Court definitively. We are not as well along in our review of the other discovery as President Trump and his counsel are. I certainly don't intend to duplicate efforts, and so we are processing. They wrote a letter this morning that is voluminous. Now, I have to go through that and check off all our boxes and see if there is anything left outstanding. I say yes, because in every case, there is a disagreement.

I mean, we brought to the Special Counsel's Office attention the idea of prosecution team now months ago. I think, in addition to NARA, we are going to add the Secret Service to the list of people we think should be part of the prosecution team. The Secret Service clearly play a significant role in this case by virtue of the fact that they have their own security system at Mar-A-Lago with their own

cameras that President Trump and his staff did not have access to.

So we think, yes, there will be litigation on what was produced to us in discovery, but I don't want to make a misrepresentation to the Court about the scope of that.

THE COURT: Okay. Anything further, Mr. Woodward?

MR. WOODWARD: No, Your Honor. Thank you.

THE COURT: All right.

Counsel for Mr. De Oliveira?

MR. IRVING: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. IRVING: I suppose -- and I'll keep this brief. My reaction to hearing my colleagues over the last hour or so, speaking on behalf of a defendant who was indicted on July 23rd and not arraigned until the 15th in a discovery letter from the Government -- initial discovery letter is dated August 11th, so my reaction to hearing what we have heard so far is just -- and how, I mean even more so for us, to be able to get through a lot of this material.

You know, I'm not even close to getting through classified or unclassified material in order to know whether or not there is a need to file a motion to compel.

I will say that, you know, the Government has been very responsive and, you know, courteous and, you know, it just is what it is. They are providing us with a laptop as well

today that is hopefully going to help with this video thing which is, as Mr. Woodward noted, I mean, really a huge problem. And I counted 21 folders in discovery on this, you know, extra drive with 211 zipped folders, and that's not including the viewer, so I think I'm accurate on that. But each one -- I mean, you know, the one that I was looking at the other day told me it was going to take nine hours and 30 minutes to unzip. And then half the ones that I have unzipped don't work and, you know. So I have had those discussions with the Government. You know, they have been very helpful in trying to solve the problem, but it hasn't been solved yet. And really, I'm not making any -- casting any aspersions on the Government, I'm just saying we are not there and, you know, there are very legitimate reasons why I need to look at, you know, far more video than what they think is significant.

In terms of classified, just status, I believe -- well, I received notice that I have clearance for I think everything on October 11th, and we received notice this morning that Mr. Murrell does as well, so we are hoping to resolve at least the access to the classified side tomorrow.

THE COURT: With the additional read-ins?

MR. IRVING: Yes, Judge. So that's really all I have.

THE COURT: Okay. Thank you very much.

Let me now hear from Mr. Kise.

MR. KISE: Thank you, Your Honor. I'll just be very brief.

I just want to amplify slightly from the front lines of experience what Mr. Blanche was saying about the potential overlapping trials and the challenge that is going to present really for the client, for President Trump, setting aside the lawyers. I mean, I can assure you it's presenting significant challenges for the lawyers; but for the client himself, I think the Court -- I would ask the Court to at least just consider that because I know from my experience here, in this trial, that it's very difficult to be trying to work with a client in one trial and then be simultaneously trying to prepare for another trial that, at least right now based on the current schedule, is going to come very, very close in time based on the timeline which Mr. Blanche laid out which I think is realistic, and so I would ask the Court to be sensitive to that because it has been extraordinarily challenging.

The timeline here, as you may have observed, has extended considerably when we originally came to Your Honor --

THE COURT: Slow down.

Can you slow down, Mr. Kise?

MR. KISE: Yes, Your Honor, certainly.

THE COURT: Rewind a little bit.

MR. KISE: So I was just talking about, first, the schedule for preparing President Trump that Mr. Blanche

referenced and the challenges just presented to the client by having these very close in time or even overlapping trial scenarios. And I know from experience in this trial that it has been extraordinarily challenging to be preparing for one case and then having to manage issues in the other litigation that is going on, just on an ongoing basis not even considering preparing for trial. That has been challenging for the client because there is only so many hours in the day for him to be focused on all of these various issues. So the overlap does present significant challenges for the client not to mention the lawyers.

The lawyers overlap in all of these cases, Mr. Blanche and I anticipate -- well, Mr. Blanche is already involved in the D.C. case, and I anticipate having some involvement in that case as well, so that's in addition to Your Honor's case, and then in addition to the trial that we are engaged in now on behalf of the same client. And so that's presenting logistical challenges for the lawyers which I think or at least some consideration, none of us are indispensable but certainly some consideration.

This trial was scheduled to conclude originally by the second week in November; and frankly, at this point, I think it would be -- it would be fortunate if we are out of here by the end of this year, based on the schedule that we are on, the trajectory we are on right now. As a result, I haven't

even been able to talk with Mr. Blanche about anything associated with classified discovery because, as Your Honor knows, those conversations can only take place in the SCIF which I'm unable to get to.

So it's just, the schedule has presented a lot of challenges for Counsel, and I just wanted to point out not only the additional challenges for Counsel, but also to emphasize the point that Mr. Blanche made about the challenges to the client himself trying to prepare for these series of trials and particularly with the potential overlap of the D.C. trial either overlapping with this Court's current trial date or coming right, you know, on the heels of it could be -- could prove very difficult and very challenged.

Thank you, Judge.

THE COURT: All right. Thank you, Mr. Kise.

All right. Now I'll hear from the Government, Mr. Bratt or Mr. Harbach.

MR. BRATT: Thank you, Your Honor.

I think one starting point is to look at this from the perspective of what has been the Defense position from the outset of this case, and since they have raised the D.C. case, also what their position has been in that case which is to delay it as long as they can.

It's not surprising given that, back in July, they were asking for a trial date after the November election. It's

not surprising that their motion to change the CIPA dates morphed into a motion for adjournment, and the very date that they are again recommending is mid-November 2024 or afterwards.

The Court really cannot let or should not let the D.C. trial drive the schedule here. In the D.C. case, they are making many of the same arguments, though they have not yet filed a motion for adjournment. They have already said that they likely will. They have talked about --

THE COURT: Do you know of any other case where the same defendant is facing indictment in multiple jurisdictions and DOJ has taken the position that there should be no consideration to the fact that, of course, the defendant needs to be able to assist in his defense and there becomes an unavoidable reality that the schedules collide?

MR. BRATT: So they could collide. We don't know that that's going to happen. You know, in the D.C. --

THE COURT: Can you elaborate on how you don't know that because --

MR. BRATT: Because --

THE COURT: -- from what I'm hearing, the schedule is looking like it is going to consume March and April possibly going into May, and that's to say nothing of trial prep in this case and all the many other steps we haven't even embarked upon, and I'm just having a hard time seeing how -- how realistically this work can be accomplished in this compressed

period of time, given the realities of what we are facing and the multiple material developments that have come to light since the initial schedule was put into place in mid to late July including, of course, the return of a superseding indictment which introduced a new defendant into the case, not to mention the multiple logistical issues that I have indicated with the SCIF and with the security procedures required to review this information. So I'm not quite seeing, in your position, a level of understanding to these realities.

MR. BRATT: So -- and I understand everything that the Court is saying.

A lot of this, though, is in the realm of the -- I don't want to say hypothetical, but it is in the realm of we don't know what is going to happen. We don't know what is going to happen in this case. We don't know what is going to happen in the D.C. case. Among the things that the Defense has raised in the D.C. case is that if there are adverse rulings on any of the pending motions to dismiss, that they would seek an appeal and seek to stay the proceedings. That could happen. We don't know. Obviously, there are arguments both ways, arguments both before the trial court before the D.C. Circuit, but that could happen. That trial date could disappear. What -- so we understand that.

We understand the competing demands on the former President, and I think he stands apart from his counsel. It

was -- he has the right to counsel of his choice. He did choose Mr. Blanche and his firm knowing that they were already involved in this case. Mr. Blanche and his firm took this representation knowing that they were involved in this case. And really, my argument to the Court is that we should keep -- I mean, obviously, there have to be some -- some modifications, particularly in the CIPA schedule, but we should keep on track toward the date that is present.

Things could happen, things could happen with the D.C. case that would make going forward on May 20th, 2024, in this case not feasible. That may happen and we can address that, at that time, but we should be moving forward in this case.

THE COURT: Oh, certainly I think we should be moving forward, and I think -- and I share that view.

Can you drill down on the discovery particulars that I was mentioning in the beginning so that I can get a better understanding?

We have had hearings where we have discussed numbers, quantity, data, disks, et cetera, and I know there are a bunch of responses to the SDO; but what I would like to get, if you can, is just a rundown of unclassified and the quantity in the data associated with that, plus then shifting over to the classified, as best you can, with the various categories of information that I have identified.

MR. BRATT: I would be happy to, Your Honor.

First, on the unclassified side, we have produced approximately 1.3 million pages of classified discovery. That includes -- as we have set out in our various pleadings, that includes almost 200 witness transcripts of grand jury testimony, of interviews, all the 302s related to that, all the agent notes related to that.

THE COURT: This is classified discovery?

MR. BRATT: This is unclassified.

THE COURT: Unclassified, to be clear.

MR. BRATT: There are some -- there are some classified transcripts; and actually, Mr. Blanche --

THE COURT: Sorry, let's try to stay organized here.

MR. BRATT: Sure, sure.

THE COURT: So on the unclassified piece only, you said 1.3 million pages?

MR. BRATT: That's correct.

THE COURT: Okay. Does this 1.3 million pages, does that include the CCTV footage or any other multimedia?

MR. BRATT: So it is -- those are the documents, the digital documents that somebody can look at and read. The CCTV is --

THE COURT: Separate.

MR. BRATT: Right. You can't put pages on it.

THE COURT: Correct.

MR. BRATT: Right so -- but there is all the CCTV.

THE COURT: Would you agree with Mr. Woodward's estimate that it is 60 terabytes, I think?

MR. BRATT: That sounds about correct, yes.

THE COURT: Okay. And it's, from what I heard, approximately -- from a pure temporal perspective, approximately nine months, but because of the multiple cameras, it turns into almost two years of watching unless you can collapse it into one screen maybe.

MR. BRATT: I think we disagree with them on the math. It is a lot. It is several years' worth of materials -- of video footage. I think their number is ten years. I think it is less than half of that, but it is a lot; but it's important to look at it in context. So the key dates for this case are May 11th, 2022, which is when the grand jury subpoena was served; and August 8th, 2022, which is when the search at Mar-A-Lago occurred. Those are the key dates for viewing testimony. The key location is Mar-A-Lago. I mean, we did get stuff from Bedminster, we did get things from -- but the key location is Mar-A-Lago during that time frame.

There are cameras that are on 24 hours a day. There are cameras that are motion-activated. Some of the cameras that are on 24 hours a day. For one example, there is a camera that looks at a retaining wall, that's all you see. You may see birds come through, but it is looking at a retaining wall.

I think it is a security camera. It's possible somebody might be able to go over that wall, but it is just looking at that wall. And I don't dispute that they have the right to view these things, but there is a key time period to be looking at, and that's May 11th, 2022, through August 8th, 2022.

We have pulled for them what we believe are the key periods of time and the key footage. Again, they have every right to look for other things. I won't get into a debate with Mr. Woodward about his theory of the case. I think we have our theory about where things are and where things went; but certainly, they have that opportunity.

And look, I appreciate the kind things they have said to us about our responsiveness on this. And I also appreciate Mr. Woodward, you know, owning the fact that he waited three months to ask us for the array; but they have had this material for a very long time. It was actually the first I have heard today that President Trump's counsel have been having issues viewing the footage. And, you know, we have enlisted technical experts to assist, and we will continue to do that; but, they have the key periods and they should know where to be looking.

THE COURT: All right.

So is that the full scope of the unclassified?

MR. BRATT: That is the full scope of the unclassified. The one --

THE COURT: So just to be clear, the 1.3 million

pages, that's a top line number.

MR. BRATT: Yes. That's a top line number of all the unclassified essentially documents that are --

THE COURT: Okay. And all of this information has been produced.

MR. BRATT: It has been produced, yes.

THE COURT: Okay.

MR. BRATT: Yes. And the bulk of it was produced in July.

THE COURT: When was the last production?

MR. BRATT: So our last production, a very small production we gave them was I think last week. It was like 138 pages. This was in response to their discovery letter.

THE COURT: Okay.

Okay. So then shifting gears to the classified.

MR. BRATT: Correct.

THE COURT: Is it 3,500 pages or what exactly?

I know there are some disks that have been added to the mix or perhaps they were always there; but in any case, some details would be --

MR. BRATT: Sure.

THE COURT: -- useful.

MR. BRATT: In our first tranche that we produced was approximately 2,500 pages.

THE COURT: Twenty-five hundred, okay.

MR. BRATT: That was produced on September 13th.

Over the following three weeks or so, we have produced an additional approximately 3,000 pages. So there was approximately 5500 pages of classified discovery in the SCIF.

THE COURT: Does that include the disks?

MR. BRATT: So the disks are separate, but it is important to understand what is on the disks. The disks include photographs of both unclassified documents and the very same classified documents, hard copies of which they now have in the SCIF. There is nothing unique about what is on -- of any of the photographs that is on the disk.

THE COURT: So you are saying there is nothing in the disks that is not in the 5,500 pages?

MR. BRATT: Correct, correct.

THE COURT: So then why do you need the disks?

MR. BRATT: Well, we gave them -- so the disks do -- they have the transcripts of the classified interviews. The disks include the audio for the classified interviews. We --

THE COURT: Okay.

MR. BRATT: We provided -- you know, I think technically under Rule 16, since the photographs were taken during the execution of the search warrant, that's something that's Rule 16 materials, so we have given them --

THE COURT: But in any case, you still need to go through all of the disks and all of the paper and do the

cross-reference to ensure that you have actually reviewed all of this; and so even if there is duplication, it still takes time to determine that it is duplicate.

MR. BRATT: So good thing you mentioned that, Your Honor, because we have done the cross-referencing for them. In our response to their classified discovery letter, we gave them the cross-referencing by Bates -- picture by Bates number.

THE COURT: Okay. And when was that cross-reference done?

MR. BRATT: That was Monday night?

Yeah, Monday evening.

THE COURT: October 30th maybe?

MR. IRVING: Thirtieth.

THE COURT: Okay.

Okay. So in terms of size of data in the disks, because there was also some back and forth on that, how much data are we talking in the disks?

MR. BRATT: I don't dispute -- I don't have the number in front of me, but I don't dispute that, you know, the audio files and the photographs equal whatever the data is that's on it.

THE COURT: Okay. All right.

Now, I went through some of these categories with Mr. Blanche, but classification reviews, are those included in the 5,500 and/or the disks?

MR. BRATT: Yes. And just to respond to something Mr. Blanche said, and it may have been oversight, it is not just for the 32 documents. It is for all 340-some documents that were at Mar-A-Lago.

THE COURT: So there are no outstanding materials related to classification reviews that need to be turned over; is that correct?

MR. BRATT: Not from hour perspective. You know, they are going to be arguing, we believe, that maybe there is some communications related to those that we should turn over or there may be internal, you know, different agencies did the classification reviews, that some of their internal materials need to be turned over, we can address that; but we have turned over what we believe our discovery obligations require us to turn over with respect to the classification review of the documents.

THE COURT: Okay. How about the Prudential Search Reviews?

MR. BRATT: So, Your Honor, in our -- in ECF-173, we acknowledge that we did PSRs. One thing that is --

THE COURT: Can you show me where that is, please.

MR. BRATT: It's on page 10.

It begins -- the paragraph begins on the bottom of page 10.

THE COURT: Okay. So here, of course, you are making

the original point that you are not required to conduct these, but then -- but then there is a statement that there have been, quote, appropriate Prudential Search Requests made and produced, so --

MR. BRATT: Correct.

THE COURT: -- first to follow up with what you have indicated, I guess the answer is, "Yes, we have conducted the Prudential Search Requests that we believe are appropriate and we have indicated as much to the Defense," and fill in any blanks I might have missed.

MR. BRATT: That's correct.

I would just state another sort of bedrock principle of criminal procedure is that the Defense doesn't get discovery on how we did discovery. And we believe we have done -- taken the steps that are necessary to comply with our Rule 16 and *Brady* obligations and --

THE COURT: Okay.

MR. BRATT: -- we can attest to that, I'm attesting to that.

THE COURT: Okay. All right.

So what about the *Jencks* and *Giglio* material for law enforcement witnesses? Has that been produced; and if so, as of when?

MR. BRATT: So in our production of classified -- unclassified discovery, we have produced all, again, agent

notes; 302s; there were agents who testified as summary witnesses before the grand jury here, those transcripts have all been turned over. We have provided all of that *Jencks* material. There is -- we provided -- we use the term "FBI forms," it is more than just FBI forms, but things from the case files which also include communications from some of the agencies. I can address the prosecution team issue in a moment; but I think it should not be surprising that in any case, that there is communications between agents and prosecutors and the victims of the case, and some of that has been produced.

The one subsect of agent *Jencks* that we have not produced -- and again, I think we have been transparent about that -- is we have not produced substantive agent communications on text messages or emails, and we will produce it. But, you know, there have been a lot of agents that have worked on this case. We have already begun working on what I'll call "order of proof for trial;" and once we decide which the agents we will call as trial witnesses, we will produce their agent *Jencks*. It will be -- again, even though the Court's order says "day of trial," it will be well in advance of the day of trial.

THE COURT: So in terms of the date by which all of the classified discovery to date was made available to the Defense in the SCIF, in this district, when was that?

MR. BRATT: It was -- again, won't get into a dispute about when they could have come here, it was brought down on the 17th, last week.

THE COURT: Of October, okay.

All right. Now, I would like to hear from you on the sequencing, the order vis-a-vis motions to compel on Section 4.

MR. BRATT: Yes, so in some ways, Your Honor, Your Honor's order this morning is I know going to change part of the CIPA 4 schedule; and I think in some ways, some of the motions to compel are going to line up right around the same time. I don't know. I haven't seen what the Court is planning but -- so that as sort of a practical matter, they may sort of happen --

THE COURT: What do you mean "what the Court is planning"?

MR. BRATT: In terms of the order if --

THE COURT: That's why I'm having this hearing.

MR. BRATT: No, no -- yes, Your Honor, I'm sorry; but the opinion that you issued this morning, and maybe I thought it was that the Court already had an order in mind as to what we would have to file with respect to the materials that we want to keep from Defendants Nauta and De Oliveira. And if I misread it, I apologize.

THE COURT: That order was designed to flesh out the Court's view of the scope of Section 3. This hearing is

designed to understand what sort of reasonable adjustments should be made given the needs of this particular case and, of course, that includes Section 4.

MR. BRATT: In any event, we are going -- I anticipate that we now have another Section 4 to file and so -- and we will probably combine what we have already drafted with that and present it to the Court, and that the timing on that and I'm not sure, and as we stand here now, I don't know how long it will take us to get that ready because there are a lot of declarants that we are going to have to get declarations from to assert the classified information privilege for all of the materials that we have.

But the point I was trying to make is that some of what they are talking about in terms of their motion to compel may run in tandem with what the schedule ends up being for the CIPA 4. I do not -- we do not believe that the motion to compel litigation needs to be complete before they can file with the Court their theory of defense with respect to the 793 charges, and it kind of strains credulity that they say they can't do that. You know, the elements of 793 are unauthorized possession of a document containing national defense information, possessing it willfully, that is with knowledge that what you are doing is unlawful in failing to return it to a proper person. All that information they can flesh that out for the Court, and there is really -- they may have legal --

separate legal challenges to the 793 charges, but if you look at the elements, those are the defenses: Either he didn't possess it, or he was authorized to possess it, or the information doesn't contain national defense information, or he wasn't acting willfully, or he returned it before he was being asked to return it. Those are the defenses, and they may have other color they want --

THE COURT: But to some extent, of course, one would have to review the relevant classified discovery in order to formulate a meaningful response, even if maybe not entirely complete, it would be difficult to just sketch out a skeleton, so to speak, of your theory without really doing so rooted in the documents themselves.

MR. BRATT: So I'm not sure that you do need to be able to say, no, we know this doesn't contain NDI for the Court to rule on whether or not what we are presenting in Section 4 is relevant and helpful to the Defense, I don't think so.

I understand that, you know, they have said in their pleadings that they are going to strongly contest whether or not the information was national defense information, strongly contest whether it was closely held. Our burden is to prove that it was, and we embrace that burden; but these documents, you know, I --

THE COURT: That's fine. We don't need to talk about the actual contents of the documents, obviously, given this is

a public hearing.

All right. Anything further on the motions to compel?

MR. BRATT: Yeah, one other -- I want to sort of lay down a marker on them because there are about three different points in their pleadings that they say they need the discovery for a selective prosecution motion. And I think, as the Court is aware, both the Supreme Court in *Armstrong versus* -- *United States v. Armstrong* and a number of decisions in the Eleventh Circuit, there is no constitutional right to discovery for -- to set out a selective prosecution defense. And the Eleventh Circuit has said that is a demanding bar that the defendant must clear before it can get discovery related to selective prosecution.

And so to the extent that they may see some of these motions to compel as kind of a back door to get information to support a selective prosecution defense, we are going to want to brief to the Court whether or not they can get discovery on a selective prosecution defense.

THE COURT: Okay, that's fair. I think briefing would be in order if it is an issue that Defense raises.

All right. Now, in terms of the ex parte nature of the Section 4, at least with respect to the former President, what is your view on whether that would necessarily need to be conducted ex parte, and I should be more specific. What is

your view, if you have one, on the suggestion that at least with respect to that Defendant, it could be done on an attorneys' eyes only basis, given the permissive language in Section 4?

MR. BRATT: So acknowledge that the language in Section 4 is permissive and that the Eleventh Circuit in *Campa* said that a Court has discretion. But I think there is also a very strong admonition in *Campa* that it stands CIPA 4 on its head to give the defense, whether it is defendant or their lawyers, the very information that the Government is seeking either to delete, substitute, or come up with -- delete, redact, or substitute. And it is hard to see how consistent with that admonition in *Campa* and also in all the other circuits that have faced the issue, in the *Farekh* case that they cite in their brief, Second Circuit case where the very argument was made, okay, it is one thing if counsel don't have clearances, but it is something else if counsel was cleared that they can see it. I just don't see how the Court can overcome that admonition.

THE COURT: Okay.

All right. Now, on the issue of logistical concerns, I did note in your opposition that, quote, nothing material has changed since the Court set the trial date, and I was a little bit you puzzled by that statement, so what are your thoughts?

MR. BRATT: I have to -- sorry, Your Honor, which of

our --

THE COURT: It's docket 165.

MR. BRATT: Hold on for a moment.

Thank you, Your Honor. Which page?

THE COURT: That, I don't know.

MR. BRATT: I just want to make sure that I understand the context in which we said that.

And, look, I will acknowledge to the Court that there have been some unforeseen difficulties with the SCIF that we thought were cleared up earlier in time, and we may have had a different understanding of that at the end of September from what then transpired over the coming weeks. So, you know, I'm not going to say things didn't change, when there are issues with the SCIFs, we know that; and that's certainly -- and I think as we have said, that certainly does require an adjustment to the CIPA schedule like, right now, de facto, there has to be because there has been a stay and some of the dates have already passed.

So you know, again, when we wrote this, we had I think one understanding of what was going to happen, not all that played out on the timeline that we thought it was going to play out.

THE COURT: Okay. All right.

Anything further before I turn back to Defense Counsel, Mr. Bratt?

MR. BRATT: Just one other clarification for Mr. Woodward.

There is not a forensic image of Mr. Nauta's phone in the SCIF. What is there is the image that was extracted from the phone and --

THE COURT: So if he wants to review the contents of the phone, can he do so outside of the SCIF?

MR. BRATT: He was provided a digital version of the phone in unclassified discovery with that image extracted. The extracted image which he is permitted to discuss and show Mr. Nauta per the protective order that is in place, that is in the SCIF.

THE COURT: But what you are saying is that there is nothing different between the unclassified and classified version with the exception of that one document?

MR. BRATT: So here's just the rub in it and so the -- what Mr. Blanche was describing, the scanned pages that they asked for where there were about five classified documents, it was multiplied, 15 classified images. We were able to produce that to them because that was not something that had to go through filter, and so, like, we don't have -- what we gave Mr. Woodward in unclassified discovery was the scoped -- the scoped review of Mr. Nauta's phone. So I can't -- so we weren't able to do the same thing for Mr. Nauta's phone as we were able to do with the other digital

images that we were able to provide that Mr. Blanche was talking about.

THE COURT: Is there anything that could be done to arrive at that clarity, maybe a conferral with Mr. Woodward so that he can better understand what he needs to do in order to view the full contents of the phone?

MR. BRATT: I think we should -- we will talk with Mr. Woodward offline, but because Mr. Nauta's phones were filtered, what was given to us is not like the original image. So we will talk with him --

THE COURT: Okay, I think that would be helpful.

MR. BRATT: But there is nothing precluding him from seeing that image in the SCIF nor is there anything precluding him from showing that image to Mr. Nauta under the protective order.

THE COURT: Okay.

All right. Thank you, Mr. Bratt.

Okay. Any final thoughts from Mr. Blanche, then Mr. Woodward, and then any other defense lawyers who wish to chime in will be given a brief opportunity.

MR. BLANCHE: Briefly, Your Honor, just to clarify a few things that were said.

This is described more fully, Your Honor, in our classified October 19th supplement to Your Honor, but the disks that are in the SCIF include three gigabytes of e-mail accounts

as well. It is not just, as Mr. Bratt just described, photographs and the like. There are -- there are substantive communications that have been produced to us on those disks, the total which is three gigabytes. Mr. Bratt is correct that some of the contents of the disks were as he described, but he is not correct that it didn't include communications such as emails.

Very briefly on the CCTV footage, our vendor says there are ten years; the Government says there are five years or so, I believe; I'm not sure that that -- I mean, that's -- it's still an extraordinary amount. We have sent numerous requests in writing to the Special Counsel about how the FBI reviewed the CCTV footage, what program they used, how they used Deloitte to do the work. They have refused to give us that information. So we will follow up with them later today or tomorrow to meet and confer, but the idea that we haven't asked the Special Counsel for more assistance with the CCTV footage is just not true.

As it relates to the Section 4 discussions, Your Honor, no matter what the Court decides about ex parte or not ex parte, the Defense and President Trump would ask for a hearing with Your Honor on the Section 4. We are certainly prepared to put something in writing, and we anticipate doing so, but we believe and the cases support that as part of that process, that the Court would hold an ex parte hearing with the

Defense to allow us to talk about our defenses and whatnot.

You know -- and again, I don't want to belabor this hearing, but Mr. Bratt suggested that they had limitations in their obligations on a Rule 16. For example, he cited a selective prosecution motion; but, as I'm sure the Special Counsel is aware, whether they find that motion meritorious or not, if they have documents in their possession that support such a motion under Rule 16, they have an obligation to provide that which is one set of documents that we have asked them to provide.

A little bit about the classified *Jencks* material, as was discussed. The issue of whether a particular document is classified or not is something for the jury. And what we are looking for in discovery and what we don't have is that has to be from a witness. There has to be a witness that is testifying about why a particular document is classified; and as part of that, like any witness, we are entitled to 3500 and *Jencks* material and we don't have that. We don't have that for all the witnesses, and our concern is that there is this class or category of *Giglio* and *Jencks* material that we are going to get at some later date which we are then going to -- it's another Section 4 litigation, at that point, because we are going to then ask the Court what we can use to impeach the witness, what information we are allowed to cross-examine him or her on.

And in our letter -- in the letter from the Special Counsel that we received on October 17th, they indicated to us that there are, in fact, witnesses that undercut their national defense information theory with at least respect to some of the documents, but they haven't told us who the witnesses are and they won't.

So just to give Your Honor a flavor of what we expect to file in a motion to compel, it's not some expansive demand under Rule 16. It's pretty consistent information that is consistent with what we expect the Government will have to prove at trial in this case. We don't -- we do have, Your Honor, class review memos where the intelligence community has concluded that a particular document is classified, and so we have a memo. We have none of the underlying correspondence that led to that conclusion. And we can tell from the -- from the correspondence that we do have that that exists. And again, that's the type of information that even under a narrow view of *Jencks*, 3500, and that sort of production, we are going to need, and so that is part of a motion to compel and shouldn't surprise the Special Counsel. And we have already asked for that and to this point haven't received it. So that's about all I would add.

The final thing, one comment Mr. Bratt made about me being associated with both this case and the case in Washington, D.C., is extraordinarily unfair. We were and I

have been and President Trump has been completely transparent with every court we are appearing in front of, what the schedules are, why the schedules that we are asking for exist, and my role in both cases and Mr. Kise's role in both cases. It is the Special Counsel that made the decision they did knowing this and knowing Your Honor's schedule.

I mean, to ask for a jury trial to start the day that Your Honor has a scheduled hearing in this courtroom, there has been no reaction from the prosecutors about that decision. Instead, what Mr. Bratt says is, "Well, President Trump has a right to counsel of his choice," I should have made different decisions about choosing to take that matter on, that's completely backwards. I mean, the Special Counsel knew from the day of the arraignment in D.C. that Your Honor had scheduled a very aggressive schedule for trial starting with before the arraignment all the way through trial in May. Notwithstanding that, they put a letter into the judge asking for a trial to start the day of the hearing.

I will add one more point, although I don't think it moves the needle, but there is a third trial that is scheduled for March 25th, and it's a state trial in New York. That judge, as to this point, refused to move the trial date so and will not -- we are hoping to have a conference with the judge, but won't even have a conference about moving the trial date until late February. So when the Special Counsel suggests to

the Court that we should just assume the May date will go because all kinds of things that can happen, that's very unfair to President Trump given what Mr. Kise mentioned about his current schedule, but imagine what that means for President Trump even when the AG trial is over. He starts January 1st having three criminal trials between March 4th and May 20th knowing they can't all go, but you can't play a guessing game. I can't play a guessing game assuming the D.C. trial is going to get adjourned or be on some sort of stay because the D.C. Circuit, I can't assume that if that happened, that the trial in New York isn't going to go forward, so there has to be some preparation for that.

The question that was not answered is the question you started out with was: Is there another case where one -- it's not just the Department of Justice that brings two separate cases against the same defendant in different districts, it is the same office. It's the same Special Counsel. The same office has brought these cases, their choice, and put the schedule in flux.

We were proceeding apace and continued to; and we are here, regrettably, not because of the conduct of President Trump, not because of the conduct of anybody on this side of the room but the Special Counsel; and they still stand up and say to Your Honor, "Yeah, we are okay, we will figure it out closer to May; we are okay." It is just not appropriate.

THE COURT: All right. Thank you, Mr. Blanche.

Mr. Kise, anything further?

MR. KISE: No, Your Honor. Thank you.

THE COURT: Okay.

Mr. Woodward?

MR. WOODWARD: Unless the Court has questions --

THE COURT: No.

MR. WOODWARD: -- for me. There is clearly some talking we need to do about Mr. Nauta's cell phone but --

THE COURT: Yes, a conferral is in order.

Anything further from the Defense side?

MR. IRVING: No, Your Honor. Thank you.

THE COURT: Okay. All right.

Well, I will take the two motions under advisement, assess as best I can the adjustments to be made to the schedule, and enter an order as soon as possible to address these multiple moving parts.

I want to thank the parties for their assistance today and wish you all a safe trip back to wherever it is you are going.

The Court is in recess. Thank you.

THE COURTROOM DEPUTY: All rise.

(PROCEEDINGS ADJOURNED AT 2:39 P.M.)

C-E-R-T-I-F-I-C-A-T-E

I hereby certify that the foregoing is an accurate transcription and proceedings in the above-entitled matter.

11/12/2023
DATE

/s/DIANE MILLER
DIANE MILLER, RMR, CRR, CRC
Official Court Reporter
United States District Court
101 South U.S. Highway 1
Fort Pierce, FL 34950
772-467-2337